HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.34985 of 1998

3.10.2007

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Between

A.P. State Civil Supplies Corporation Ltd., ..Petitioner
represented by its Secretary cum General Manager
(Finance)

AND

The Civil Supplies Hamalies Union and others ..Respondents

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:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.34985 of 1998

This writ petition has been preferred by the Andhra Pradesh State Civil Supplies Corporation Limited (for short, 'the Corporation') against an order passed by the Regional Provident Fund Commissioner, Hyderabad ordering that Hamalies engaged by the Corporation answer the description of 'employee' found in Section 2 (f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act') and therefore, are eligible to be enrolled to the membership of the Employees Provident Fund and other Schemes framed under the said Act.

The principal contention canvassed on behalf of the petitioner by Sri D.Linga Rao, learned Standing Counsel for the Corporation is that the petitioner enters into contracts and it is the contractor who will be making available the Hamalies for attending to the loading and unloading operations at various godowns maintained and run by the Corporation. These operations form part of the contractual obligations and therefore, the Hamalies provided by the Contractor can not be treated as employees of the writ petitioner Corporation. He therefore contended that the order passed treating the Hamalies of the contractors of the petitioner as workmen and on that basis insisting the Corporation to make the provident fund

contributions, is an illegal order.

Sri R.N.Reddy, learned Standing Counsel for the Employees Provident Fund Organization on the contrary would contend that the definition of the expressions 'employer' and 'employee' as contained in sub sections (e) and (f) of Section 2 of the Act hold the key for understanding the ramifications of the obligations thrust upon under this Act, in particular, under Section 7 read with paragraph 26 of the scheme framed thereunder. It is therefore appropriate to consider the definitions of the expressions – 'employer' and 'employee' which read as under:

> "e) 'employer' means –
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> i) in relation to an establishment which is a factory; the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as manager of the factory under Clause (f) of sub section (1) of Section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and
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> ii) in relation to any other establishment, the person who or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to manager, managing director or managing agent, such manager, managing director or managing agent;)
>
> (f) 'employee' means any person who is employed for wages in any kind of work manual or otherwise, in or in connection with the work of (an establishment) and who gets his wages directly or indirectly from the employer, (and includes any person –
>
> i) employed by or through a contractor in or in connection with the work of the establishment;
>
> ii) engaged as an apprentice, not being an

apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment)."

It would therefore be manifest that any person who is employed for wages and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment falls within the four corners of the expression 'employee'. In fact, Section 2(f) of the Act has suffered an amendment through Act No.33 of 1988 which was brought into force with effect from 1.8.1988 and put this issue beyond any pale of doubt by clarifying that even such persons who have been engaged in the service indirectly through a contractor are also liable to be treated as employees so long as they are engaged in connection with the work of the establishment concerned. The expression 'establishment' therefore is what is referable to the principal employer. In that respect, the writ petitioner Corporation answers the description of 'establishment' and since it is an admitted position that it engages the contractors through whom Hamalies are paid their wages, the Hamalies so engaged fall within the definition of the expression 'employee' as found in sub- section (f) of Section 2 of the Act. Section 6 has thrust an obligation to make the payment of contributions provided for under Section 7 A of the Act.

It will be important at this stage to notice that Section 5 of the statute empowered the Central Government to frame a Scheme which will be providing for the necessary mechanism to give effect to the welfare measures contemplated by the Act.

In terms thereof, The Employees' Provident Funds Scheme, 1952 has been framed. Paragraph 30 of the Scheme dealt with the method and manner of payment of contribution. Since it is significant for resolving the current controversy, it is extracted herein below:

> 30. Payment of contribution:
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> 1) The employer shall, in the first instance, pay both the contribution payable by himself (in this scheme referred to as the employer's contribution and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).
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> 2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.
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> 3) It shall be the responsibility of the principal employer to pay both the contributions payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.
>
> Explanation:- For the purpose of this paragraph the expression "administrative charges" means such percentage of the pay (basic wages,

> dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which provident fund contributions are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix.)"

Paragraph 30 made it clear that the employer at the first instance has to pay both the contributions payable by itself as well as on behalf of the member employed by him directly or through a contractor. However, it is the contractor who shall pay to the principal employer the amount of member's contribution which he can deduct from the wages payable to the employee together with equal amount of his contribution and also administrative charges. Therefore, the obligation to make the contribution at the first instance is thrust upon the principal employer. Hence, the writ petitioner cannot escape the statutory obligation thrust upon it particularly in terms of paragraph 30 of the Scheme. This apart, Section 8 A makes it clear that the amount of contributions and any charges for administering the fund may be recovered by the employer from the contractor either by deducting from any amount payable to the contractor under any contract or as a debt payable by the contractor. Thus, the writ petitioner has been thrust an obligation to make payment of entire contribution to the Employees Provident Fund Organization at the first instance. Subsequently, the writ petitioner can recover the same by deducting from any amount payable by it to its contractor or as a

debt payable by the contractor himself. Therefore, the writ petitioner cannot find fault with the impugned order passed by the Regional Provident Fund Commissioner. The writ petition therefore does not contain any merit. It is accordingly, dismissed.

However, it is open to the writ petitioner in terms of Section 8A read with paragraph 30 of the Scheme to recover such contributions from its contractor. The list of Hamalies for whose benefit the contributions are made, be made available to the Employees Provident Fund Organization within a period of thirty days.

With this, the writ petition stands dismissed. No costs.

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NOOTY RAMAMOHANA RAO.J.

3.10.2007
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